Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Revision of the Commission's Rules to	)	CC Docket No. 94-102
Ensure Compatibility With Enhanced 911	)	
Emergency Calling Systems	)	

To: The Commission

COMMENTS OF MERCEDES-BENZ USA, LLC

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Revision of the Commission's Rules to Ensure Compatibility With Enhanced 911 Emergency Calling Systems	)	CC Docket No. 94-102

To: The Commission

COMMENTS OF MERCEDES-BENZ USA, LLC

Mercedes-Benz USA, LLC ("MBUSA"), on behalf of its parent company, DaimlerChrysler AG, hereby submits these comments in response to the Commission's Further Notice of Proposed Rulemaking (the "Further Notice") in the above-captioned proceeding. 1/ MBUSA addresses its comments to the questions raised in the Further Notice relating to telematics services.

I. INTRODUCTION & SUMMARY

MBUSA is proud of the role it and its fellow safety-focused telematics service providers ("TSPs") have played to date in the provision of emergency response assistance. Without any prompting from government regulators, the telematics industry has created the only means of delivering emergency location information to any PSAP in the nation, including those that are not capable of receiving Phase II E911 data from wireless carriers. Given this track record, it is

1/ Revision of the Commission's Rules to Ensure Compatibility With Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Further Notice of Proposed Rulemaking*, FCC 02-326 (rel. Dec. 20, 2002) ("*Further Notice*").

evident that no Commission regulation is needed to spur TSPs to expand and improve the provision of emergency assistance capabilities to their customers. Moreover, any such regulation would likely result in an overall reduction in both private and public emergency response services. A newly-imposed regulatory regime would chill investment in the nascent telematics industry, which is already in the midst of a costly transition to digital services. Likewise, PSAPs are in the process of upgrading to Phase-II capabilities, which could be further delayed as a result of new costs relating to upgrades for the receipt of telematics data. Accordingly, regulation would be counterproductive to the Commission's goal of promoting "safety of life" services.

In addition to the reasons described above for refraining from new regulation, it is important to note that MBUSA's Tele Aid service does not satisfy any of the four criteria established in the Further Notice for analyzing whether a service should be expected to comply with E911 rules. 2/ Specifically, (1) Tele Aid is not an interconnected service that permits subscribers to communicate with all other users on the public switched network ("PSN"); (2) Tele Aid subscribers do not have a reasonable expectation of access to 911/E911 services; (3) Tele Aid does not compete against traditional CMRS; and (4) it is not currently operationally feasible for Tele Aid to support E911. MBUSA discusses these points in more detail below.

2/ *Further Notice* at ¶ 13.

II. DESCRIPTION OF MBUSA'S TELE AID SERVICE

MBUSA's Tele Aid service, offered in conjunction with its telematics service provider ("TSP") partner, ATX Technologies, Inc. ("ATX"), provides customers with unrivaled automotive emergency monitoring and response services. 3/ Although Tele Aid also provides customers with "one-touch" access to MBUSA call centers for roadside assistance and vehicle information, 4/ the cornerstone of the service is its ability to assist vehicle occupants in the event of an emergency. A connection to the ATX emergency call center may be established manually, by pressing the emergency "hot button," or automatically, by means of the automated collision notification ("ACN") system. The latter is triggered when collision detection sensors in the vehicle detect an impact, or when other sensors detect that airbags have been deployed or that seatbelt pretensioner devices have been activated. The vehicle's location, as determined by means of an on-board GPS satellite receiver, along with the crash sensor signal, are then transmitted to the call center. At the same time, a voice connection is established via the dedicated Tele Aid speakerphone, allowing the vehicle's occupants to communicate, if conscious, with call center dispatchers. If the occupants are unable to respond

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3/ MBUSA currently has an installed base of over 600,000 Tele Aid units and expects to install roughly 200,000 units per year over the next several years. MBUSA is in the process of obtaining and testing digital-capable Tele Aid units to be phased-in on future model-year vehicles.

4/ The Tele Aid console consists of three "hot buttons:" one for emergency assistance from the ATX emergency call center; one for roadside assistance (including remote diagnostics); and one for vehicle information from MBUSA's Customer Assistance Center.

verbally, the call center summon help by contacting the appropriate PSAP or other local emergency contact.

Although Tele Aid's voice and data transmissions are made by accessing the wireless network of an available CMRS carrier, the embedded Tele Aid telematics unit is specifically designed as a *dedicated* device that can only be used to connect to the ATX or MBUSA call centers. Subscribers may not use the Tele Aid device to reach – or be reached by – other numbers on the PSN. 5/ Indeed, the devices are not even assigned North American Numbering Plan ("NANP") numbers. Instead, they are assigned "virtual numbers" that cannot be dialed from the PSTN. 6/ The ATX call center is connected to Tele Aid's CMRS carrier by means of a dedicated T-1 connection. This permits the call center to access the carrier's network directly and contact a particular Tele Aid unit by using only its virtual number.

III. NO NEW COMMISSION RULES ARE NEEDED TO IMPROVE EMERGENCY ASSISTANCE TO TELEMATICS SUBSCRIBERS

The Further Notice sought comment on what E911 obligations, if any, should be required of telematics. 7/ MBUSA believes that nothing need be "required" of safety-focused telematics providers such as MBUSA. Tele Aid is a

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5/ For this reason, Tele Aid obviously cannot compete with traditional CMRS service, and therefore does not meet the Commission's third criteria for determining whether E911 regulation is appropriate. *See Further Notice* at ¶ 13.

6/ The virtual number "area code" is 198, which does not conform to the NANP.

7/ *See Further Notice* at ¶ 64.

perfect example of an emergency assistance service developed by the private sector entirely *without government mandates*. The market incentives that fostered the service in the first place will, without the imposition of new regulations, continue to push MBUSA and similar TSPs to offer the most effective emergency assistance available for their subscribers. In the future, this may well include the electronic transmission of advanced ACN data to PSAPs or emergency responders, as the Further Notice mentioned. 8/ Indeed, ATX is already actively engaged in dialog with public safety groups to determine the best means of implementing these future advancements. 9/

A. Tele Aid Offers Advantages Over Direct-Dialing of 911

Tele Aid, which is based on the "dispatch" or call center model of providing assistance, is superior to relying on manual, direct-dialing of 911 (a process, incidentally, that *is* governed by regulations). 10/ The advantage is greatest at times when help is needed most critically – *i.e.*, when the vehicle occupants are incapacitated. Mandating compliance with specific E911 requirements will do little good, for example, when an accident victim is unable to "push the button" for 911 dialing. Moreover, the call center can provide important

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8/ *See Further Notice* at ¶ 74.

9/ DOT-funded tests are also underway to study these issues. *See Further Notice* at ¶ 67, n.179-80.

10/ The Further Notice asks whether the dispatch model should be "the primary manner in which emergency services are offered to users of telematics systems." *Further Notice* at ¶ 65. While MBUSA believes the dispatch model offers superior service to its subscribers, it does not believe the Commission should mandate this, or any other model, for the provision of emergency services.

information, not otherwise available to a PSAP, in the event the occupants are unconscious. For example, the call center can provide a detailed description of the vehicle and tag number and can call the subscriber's designated emergency contacts. MBUSA is in the process of developing Tele Aid so that crash-related data from the vehicle crash sensors can also be communicated via the call center to emergency responders, giving them a better idea of the nature and severity of the accident and the type of injuries to be expected.

Even if vehicle occupants are conscious, they may not know their exact location. The accuracy of the location information relayed to a PSAP from the call center far exceeds the accuracy standards established by the Commission for location information provided by a CMRS carrier. Tele Aid's GPS-determined data is enhanced by an algorithm (known as "dead reckoning") that uses speed and tire direction to increase the accuracy of the data. More importantly, the call center makes vehicle location information available to PSAPs on a ubiquitous, nationwide basis, regardless of the current capability of the PSAP to receive FCC-compliant Phase I and Phase II data. 11/ This provides Tele Aid subscribers with a significant advantage over direct 911 dialing, given the number of PSAPs that are not yet capable of receiving such data from wireless carriers.

11/ The Commission's Phase I rules require carriers to provide PSAPs with the wireless 911 caller's telephone number (ANI), as well as the location of the cell site or base station receiving the call. Under Phase II, carriers are required to provide PSAPs with the caller's longitude and latitude location information in conformance with certain prescribed accuracy standards. *See* 47 C.F.R. § 20.18.

Finally, as the Commission has recognized, telematics call centers provide another important public safety benefit by acting "as a screen for non-emergency calls, thus alleviating the burden that PSAPs face in administratively handling their increasing wireless emergency call volume." 12/ TeleAid call centers, for example, screen out thousands of calls that do not require the dispatch of emergency personnel, preventing the needless burdening of local PSAPs and emergency responders. 13/

B. The Operation of the Tele Aid Service Should Assuage the Commission's Concerns Relating to the Dispatch Model

The Further Notice raised questions regarding the operation of the dispatch model in providing emergency services, including questions relating to the routing of information to the proper local emergency authority, timeliness, and the availability of call-back numbers. 14/

ATX routes Tele Aid calls for assistance to the entity designated as the emergency call contact in a given jurisdiction. This routing is based on instructions provided to ATX by the local jurisdiction and, in addition to traditional 911 communications centers, includes entities such as ambulance dispatch services, fire departments, military or campus police, National Park Service personnel, tribal

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12/ *Further Notice* at ¶ 66.

13/ MBUSA notes that, to the extent any new rules result in a perceived degradation of the Tele Aid service – *i.e.,* makes the service appear to be little more than a "direct-connect" to 911 instead of the value-added service it currently is – Tele Aid will loose subscribership, thereby jeopardizing the ability of MBUSA to provide this valuable public safety benefit.

14/ *See Further Notice* at ¶¶ 68-69.

police and county sheriff's departments. ATX's contact database is continually updated.

Calls to the appropriate entity are very timely. For ACN calls (*i.e.,* those initiated automatically), it takes on average less than 60 seconds from the time a call is received at the call center until the phone is answered at the PSAP. During this time, a trained response specialist verifies whether the call requires public emergency response. Obviously, the total elapsed time can be affected by conditions at the PSAP, just as it would if a 911 call is manually dialed from a mobile handset. 15/ Once connected, the call center has the ability to conference the PSAP or medical dispatchers into the vehicle so that they can provide medical advice or obtain a better assessment of possible injuries. Because of this conferencing ability, an E911 call-back number for the vehicle would be superfluous. 16/ Moreover, call-back capability already exists for Tele Aid. As the Commission suggested in the Further Notice, in the event the call is disconnected, the vehicle will re-dial the call center. 17/

15/ As noted above, many jurisdictions request that ATX call directly to a police, fire, or emergency medical dispatcher rather than to a 911 answering center. In these cases, the time that the 911 center would have spent taking the call is simply replaced by the time spent by ATX in handling this task.

16/ As explained earlier, Tele Aid units are only assigned "virtual" telephone numbers and can only be reached by the call center.

17/ *Further Notice* at ¶ 62.

C. Tele Aid Subscribers Have No Expectation of Direct 911 Access

As noted earlier, one important criteria in determining the appropriateness of imposing E911 requirements regarding telematics is whether telematics customers have a reasonable expectation of access to 911 or E911. In the case of Tele Aid, there can be no confusion on the part of subscribers that the Tele Aid device connects them to the Tele Aid call center, not 911. There are a number of reasons for this:

- MBUSA marketing literature clearly indicates that "your vehicle automatically notifies the Tele Aid Response Center" in the event of airbag or seatbelt pre-tensioner deployment.

- Tele Aid is demonstrated for new customers at the Mercedes-Benz dealership, where a sales representative initiates a Tele Aid "acquaintance call" that is answered by a live call center operator who explains the service.

- The initial service agreement signed by the Tele Aid subscriber states that the SOS signal is received by ATX and that ATX will attempt to contact a public safety provider or answering point to request assistance.

- The "hot button" on the Tele Aid console in the vehicle is labeled "SOS," not "911."

- Finally, the fact that Tele Aid subscribers pay a fee for the service after the first year should strongly suggest that they are receiving something other than an ability to connect to 911.

These factors support a finding that Tele Aid customers have no expectation of being able to use the Tele Aid unit to connect directly to 911. 18/ Moreover, it

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18/ MBUSA notes that, should a customer desire the ability to dial 911 from the vehicle, Mercedes-Benz vehicles offer the option of a fully integrated PCS handset – entirely separate from the Tele Aid unit – that can be used to dial 911. The handset, currently a Motorola V60, is connected to the vehicle's audio system and controls on the steering column to enable hands-free calling and other features.

should also be clear that no additional notification requirements are needed to accomplish this goal. 19/

IV. THE IMPOSITION OF COMMISSION REGULATIONS WOULD NOT BE IN THE PUBLIC INTEREST

In the preceding section, MBUSA has established that, at least so far as the Tele Aid service is concerned, no new rules are needed to ensure that subscribers receive the best level of emergency response assistance available. It is equally or more important for the Commission to recognize that new regulations imposed on the telematics industry at this time would likely be counterproductive, resulting in an overall reduction in the level of safety assistance available to telematics subscribers and the general public and PSAPs.

A. Telematics Is a Nascent Service

Despite the rosy trade press projections cited in the Further Notice, 20/ the penetration rate of telematics equipment is, after several years, still less than two percent. To date, most service offerings have been limited to luxury vehicles, as OEMs evaluate whether deployment costs can justify an expansion to lower-priced model lines. Given its nascent state, a credible threat of new regulation – particularly from an agency with which the automotive industry is not accustomed to dealing – could tip the scales against an OEM taking a chance on a large

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19/ *See Further Notice* at ¶¶ 70-71 (inviting comment on what amendment to the rules might be needed to ensure that telematics user receive "reasonable notification" that the service will not transmit directly to a PSAP).

20/ *See Further Notice* at ¶ 57.

investment in a service that remains largely untested in the broader automotive marketplace. This is a particularly plausible scenario in the automotive industry, where it takes several years to design, test, and integrate a new vehicle component into the vehicle's existing infrastructure prior to reaching market. If the regulatory environment looks uncertain, OEMs like MBUSA may decide not to risk investment in a new product that could face an adversely changed regulatory environment just as it finally hits the market. In the past, the Commission has refrained from regulating nascent industries in order not to stunt the growth of fledgling technologies and services. 21/ It should do the same here.

B. The Industry Is Already Facing Technical Challenges; More Could Be Fatal

The telematics industry is already in the midst of one major technological transition – the transition from analog to digital/dual-mode units – and is ill-prepared to accommodate additional changes. The transition to digital capability is necessitated by the Commission's recent decision to phase out the analog cellular rule, which required cellular licensees to maintain analog service in

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21/ *See* Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities, *Notice of Inquiry*, 15 FCC Rcd 19287, 19291 (2000)("The Commission has shown regulatory restraint with respect to emerging services in a number of contexts.")(citing data processing services first considered by the Commission in 1966, and a more recent decision not to require unbundling of packet switching and DSLAM functionalities used to provide advanced services); Amendment of Parts 2 and 25 of the Commission's Rules, *First Report and Order*, 16 FCC Rcd 4096, 4142 (2000) (finding that the imposition of additional rules "would be detrimental to the nascent NGSO FSS service")

accordance with the AMPS standard. 22/ TSPs, which currently rely on the ubiquitous coverage offered by analog service, are now developing new digital-capable devices. As the Commission has acknowledged, the transition to digital will take several years to implement and is requiring a significant investment on the part of MBUSA and other OEMs. 23/ Being forced to return to the drawing board in the near future for the design of yet another device that will comply with new E911 capability requirements could deal a fatal blow to the industry.

Ensuring compliance with the E911 rules would require a significant change in the design and operation of the Tele Aid devices. Currently, there is no means for the user to cause the device to dial 911. Even if this problem were overcome, the Tele Aid device would still not be capable of providing a dialable call-back number to the PSAP. The same changes would be necessary to enable 911 access from a non-service initialized Tele Aid device. 24/ Essentially, such requirements would represent a change in the very nature of the device and the specific purpose for which it was designed.

22/ *See* Amendment of Part 22 of the Commission's Rules to Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Serve and Other Commercial Mobile Radio Services, WT Docket No. 01-108, *Report and Order*, FCC 02-229 (rel. Sept. 24, 2002) at ¶¶ 18-20.

23/ In addition to deploying the new devices in new vehicles, OEMs may also be confronted with designing and implementing a program for upgrading the telematics hardware of existing vehicles – a complex undertaking given the securely-embedded nature of the devices.

24/ *See Further Notice* at ¶ 73.

C. Regulatory Mandates on the Automobile Industry Impose Greater Burdens

The Commission should also recognize that regulations imposed on vehicle-embedded telematics devices have greater consequences than those imposed on handset manufacturers. Telematics devices are tightly integrated into the vehicle's "wire harness" or electrical infrastructure. A new production platform for most Mercedes-Benz models commences only about every seven years. Because of the highly inter-related nature of vehicle electronics, making a change to a telematics unit outside the normal production cycle of a particular vehicle model is both complex and expensive. Extensive testing is required to validate the new component. Moreover, due to the need for crash survivability, telematics devices are positioned in difficult-to-reach locations, such that retrofits of existing units would be costly.

D. The Commission's Existing E911 Rules Should Not Be Changed to Require CMRS Carriers to Treat Dedicated Telematics Devices As "Handsets"

Using a "back door" approach to regulate telematics – *i.e.,* by requiring carriers to treat even dedicated telematics devices like the Tele Aid device as a "handset" under the Commission's Phase II rules – would be no less harmful to the telematics industry. Such a requirement effectively would prevent any new activation of non-Phase II compliant telematics devices by CMRS carriers that have

adopted a handset-based solution. 25/ Carriers would also be limited in the number of existing devices that could remain on their network. 26/

There are no legitimate policy reasons for treating telematics devices such as the Tele Aid device in the same way conventional mobile handsets are treated.. As noted above, unlike conventional mobile handsets, dedicated telematics devices cannot be used to communicate with multiple points on the PSN, and telematics subscribers do not expect such capability. Moreover, as described above, telematics units are securely embedded and integrated into a vehicle's infrastructure and the "turnover" rate for such devices is generally expected to be equivalent to the life of the car – substantially longer than the rate for handsets. 27/ Finally, the technological advances that now allow mobile handsets to deliver call-back and location information directly to the PSAP have not yet occurred with respect to telematics devices, and are not likely to occur in the near future. These differences militate against lumping telematics devices into the same category as conventional mobile handsets for purposes of regulating CMRS E911 compliance.

E. Overall E911 Implementation Would Be Adversely Affected; PSAPs Are Not Prepared to Accept Telematics Data

The Further Notice seeks comment on possible requirements relating to the electronic delivery of telematics-generated data, including advanced ACN

25/ *See* 47 C.F.R. § 20.18(g)(1)(iv).

26/ *See* 47 C.F.R. § 20.18(g)(1)(v).

27/ *See also*, Comments of MBUSA filed in response to OnStar's Petition for Declaratory Ruling (Feb. 7, 2003).

data, to PSAPs and other emergency service providers. 28/ At this time, such requirements are not operationally feasible. By mandating capabilities not currently possible, the Commission runs the risk of re-living the experience currently being endured in the broader E911 context, where CMRS carriers have repeatedly been unable to comply with the overly optimistic timelines set by the Commission for the development and deployment of Phase II capabilities. Moreover, the fact that electronic data delivery is not operationally feasible suggests, on the basis of the Commission's own guidelines, that no E911 obligations should be imposed. 29/

There is currently no agreement among PSAPs and emergency medical responders regarding whether, how and to what extent telematics data should be delivered to them. Tele Aid, through ATX, has been actively involved in discussions with the public safety and emergency medical response communitiesfor over two years to determine the best solutions for integrating telematics-generated data into the nation's emergency communications systems. As the Commission notes, field trials funded by the Department of Transportation are underway to provide data upon which to base future decisions about how best to provide location and other data to PSAPs and emergency response entities. These trials are only just beginning, however, and any Commission-formulated rules at this time would not be able to benefit from the experience gained thereby.

28/ *Further Notice* at ¶¶ 67, 72, 74-75.

29/ *See Further Notice* at ¶ 13.

An even larger concern than developing the proper data transfer protocols and standards, however, is the danger created by implementing new requirements impacting PSAPs as they struggle to upgrade their antiquated systems to be able to accept even "standard" Phase I & II E911 data from CMRS carriers. The Commission's Hatfield Report warned against "requirements creep" that could jeopardize this process, citing to the integration of ACN data as one potential initiative that could lead to E911 implementation delays. 30/ The Report specifically recommended that the Commission "avoid the addition of new requirements during this critical stage of the [Phase II] rollout." 31/ The public safety community agrees that many PSAPs already face a significant challenge in overcoming the obstacles to Phase II implementation. 32/ Moreover, APCO has issued a resolution expressing opposition to any regulatory or legislative mandates that would require telematics devices to interface directly with PSAPs, stating that it "feels strongly [that] the freedom for continual development of this life saving technology will better serve public safety needs than premature regulation." 33/

30/ Dale N. Hatfield, "A Report on Technical and Operational Issues Impacting the Provision of Wireless Enhanced 911 Services" (2002) at 40 ("*Hatfield Report*").

31/ *Id.*

32/ *See* Comments of NENA, APCO and NASNA, *In re Report on Technical and Operational Issues Impacting The Provision of Wireless Enhanced 9-1-1 Services*, WT Docket No. 02-46 (filed Nov. 15, 2002) at 13-14. *See also id.* at 17 ("To imagine the future is difficult enough, but equally or more challenging is putting new methods into effective operation through the work of standards-setting bodies.")

33/ *See* Association of Public-Safety Communication Officials International, "APCO Telematics Resolution Takes Non-Regulatory Approach to Emerging Life-Saving Devices," Press Release, Jan. 3, 2003.

The Commission should heed the advice of those, like Mr. Hatfield and APCO, who have studied the issue closely and determined that mandated solutions for the provisioning of telematics data to PSAPs would be premature and extremely ill-advised. While telematics data currently can at least be provided orally to emergency response entities, the imposition of electronic delivery requirements would actually harm overall public safety by delaying the ability of many PSAPs to receive even basic location and call-back data for the vast majority of the public that does not have access to telematics services.

V. THE COMMISSION DOES NOT HAVE THE LEGAL AUTHORITY TO REGULATE TELE AID AND SIMILAR SERVICES

A. The Commission Has No Subject Matter Jurisdiction Over Tele Aid

The Further Notice suggests that the Commission may have Section 201(b) jurisdiction over telematics services, based on an assumption that they are "commercial mobile services" pursuant to Section 332 of the Act. 34/ Such an assumption would be faulty as it relates to Tele Aid and similar services. The Act defines "commercial mobile service" as "any mobile service (as denied in section 3) that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public . . . ." 35/ The Commission's rules defines "interconnected service" as a service:

34/ *See Further Notice* at ¶ 77.

35/ 47 U.S.C. § 332(d)(1).

> that is interconnected with the public switched network, or interconnected with the public switched network through an interconnected service provider, *that gives subscribers the capability to communicate to or receive communication from all other users on the public switched network*. 36/

The Tele Aid service clearly does not satisfy this definition, as it does not permit subscribers to communicate with "all other users" on the PSN. As explained earlier, Tele Aid subscribers can initiate calls only to MBUSA/ATX call centers, and cannot receive calls from *any* point on the PSN, as the Tele Aid units are not assigned NANP-compliant numbers. 37/ Accordingly, because the Tele Aid service is not an interconnected service, it is not a commercial mobile service, and is not subject to the Commission's section 201(b) jurisdiction.

B. Tele Aid Is an Information Service

The Tele Aid service, moreover, is not even a telecommunications service, but rather, is an information service. The Commission historically has refrained from regulating information services. 38/ "Information service" is defined

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36/ 47 C.F.R. § 20.3. *See also* Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, *Second Report and Order*, 9 FCC Rcd 1411, 1434, ¶ 55 (1994) ("*Mobile Service Order*") ("Therefore, we believe it is reasonable to conclude that an interconnected service is any mobile service . . . that allows subscribers to send or receive messages *to or from anywhere* on the public switched network." (emphasis added)).

37/ *See id.* at ¶ 60 (defining "public switched network" and finding that "use of the North American Numbering Plan by carriers providing or obtaining access to the public switched network is a key element in defining the network because participation in the North American Numbering Plan provides the participant with ubiquitous access to all other participants in the Plan.")

38/ *See* Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities, *Declaratory Ruling and Notice of Proposed Rulemaking*, 17 FCC Rcd 4798, 4847 (2002) ("The Commission has a long history of classifying

by the Act as "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications . . . ." 39/ At a minimum, the Tele Aid service generates, acquires, processes, retrieves and utilizes the information determined by the integrated, on-board GPS receiver, and by crash sensors that are likewise integrated into the Tele Aid system. These components constitute key features of the service. The fact that voice communications are also transmitted as "an inseparable part of the service," thereby creating a "hybrid" service, does not exclude Tele Aid from being classified as an information service. As the Commission clearly explained in its 1998 Report to Congress on universal service issues, "hybrid services are information services, and are not telecommunications services." 40/ The Commission went on to say that:

> An offering that constitutes a single service from the end user's standpoint is not subject to carrier regulation simply by virtue of the fact that it involves telecommunications components. . . . Stated another way, if the user can receive nothing more than pure transmission, the service is a telecommunications service. If the user can receive enhanced functionality, such as manipulation of information and interaction with stored data, the service is an information service. 41/

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information services as Title I services and thus not subject to the obligations and requirements imposed on services subject to Title II.").

39/ 47 U.S.C. § 153(20).

40/ Federal-State Joint Board on Universal Service, *Report to Congress*, 13 FCC Rcd 11501, 11529, ¶ 57 (1998).

41/ *Id*. at ¶ 58.

Tele Aid offers a single, integrated service in which the telecommunications component cannot be separated from the enhanced capabilities. It is therefore an information service, and the Commission should follow past precedent and refrain from imposing regulations on it.

C. The Commission Cannot Assert Ancillary Jurisdiction over Telematics Providers or Automobile Manufacturers

MBUSA recognizes that the Commission has on limited occasions asserted ancillary jurisdiction over information services and certain equipment and parties over which it did not have subject matter or *in personam* jurisdiction, pursuant to Sections 151 and 154 of the Act. However, this authority is not "stand alone" authority. It may only be used where such jurisdiction is, as the Supreme Court stated in *Southwestern Cable*, "reasonably ancillary to the effective performance" of responsibilities that have been specifically assigned to it by statute. 42/ In its *Midwest Video* decision, the Supreme Court clarified its earlier "reasonably ancillary" language, indicating that the Commission's action in *Southwestern Cable* was proper because "it had been found *necessary* to ensure the achievement of the Commission's statutory responsibilities," and "the regulation was *imperative* to prevent interference with the Commission's work." 43/

The *Southwestern Cable* standard cannot be satisfied in this instance. Exercising authority over telematics services and/or telematics equipment manufacturers is not "necessary" to perform any statutory responsibility delegated

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42/ *United States v. Southwestern Cable Co.* 392 U.S. 157, 178 (1994).

43/ *FCC v. Midwest Video Corp.*, 440 U.S. 689, 706-07 (1979) (emphasis added).

to the Commission. In the Further Notice, the Commission suggests that, in asserting ancillary jurisdiction to impose E911 obligations on equipment manufacturers, it would be relying upon language, contained in section 151 of the Act, stating that one purpose of the Act is to "promot[e] safety of life and property through the use of wire and radio communication." 44/ This general statement of purpose contrasts sharply, however, with the type of statutory provisions the Commission has relied upon in the past in asserting ancillary jurisdiction. In its 1999 Section 255 Order, for example, the Commission asserted ancillary jurisdiction over voicemail and interactive menus to implement the unambiguous statutory directive, contained in sections 251 and 255 of the Act, that telecommunications network features and capabilities be accessible by persons with disabilities. 45/ Here, there is no statutory requirement that telematics data be accessible by PSAPs.

Even if one assumed that the language contained in section 151 represented a specific delegation of authority, rather than a general statement of purpose, the logic of any argument supporting jurisdiction is still elusive. Tele Aid and similar services already effectively and efficiently "promot[e] the safety of life and property." The Commission would, at a minimum, have to determine that

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44/ *See Further Notice* at ¶ 91; 47 U.S.C. § 151.

45/ Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996, Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities, *Report and Order and Further Notice of Inquiry*, 16 FCC Rcd 6417 (1999). The Commission asserted ancillary jurisdiction after finding that such jurisdiction was "essential" to the ability of persons to effectively use telecommunications.

regulation would improve this goal. As shown above, just the opposite would be true.

The courts have indicated a willingness to overturn Commission decisions when the assertion of ancillary jurisdiction has not been adequately based on express statutory authority. The D.C. Circuit, in fact, did so just last year, striking down the Commission's "video description rules." The court found that the FCC's Title I authority is "broad, but not without limits," and that section 154 "is not a stand-alone basis of authority." 46/ The court specifically noted that Congress had affirmatively directed the Commission to adopt rules on closed captioning, but had declined to do so on the related issue of video descriptions. 47/ A similar parallel applies here. It is obvious that, in drafting the 911 Act, Congress considered the role of the "motor vehicle manufacturing" industry in promoting E911 capabilities. 48/ However, Congress specifically directed the Commission only to "consult and cooperate" with the industry in this regard. 49/ Indeed, lest the Commission misconstrue the limits of this "consult and cooperate" language, Congress was exceedingly explicit in its intent that "Nothing in this subsection shall be construed to authorize or require the Commission to impose obligations or costs

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46/ *Motion Picture Association of America, Inc. v. FCC*, 309 F.3d 796, 804-06 (D.C. Cir. 2002).

47/ *Id.* at 798.

48/ Wireless Communications and Public Safety Act of 1999, Pub. L. No. 106-81, 113 Stat. 1286, at § 3(a) ("911 Act").

49/ *Id.*

on any person." 50/ This recent, unambiguous statement of Congressional intent should take precedence over any Commission interpretation of its authority based on a general statement of statutory purpose found in the Act. 51/ It also answers, in the negative, the question raised in the Further Notice of whether the 911 Act provides the Commission with a jurisdictional basis for requiring TSP compliance with E911 rules. 52/

Finally, MBUSA addresses the suggestion in the Further Notice that the Commission might have ancillary jurisdiction over telematics devices, based on its authority over consumer premises equipment ("CPE"). 53/ The Act defines CPE as "equipment employed on the premises of a person (other than a carrier) to originate, route, or terminate telecommunications."54/ The Tele Aid device fails to satisfy this definition for two reasons. First, the Tele Aid device is used only in the transmission of an *information* service, and therefore does not originate "telecommunications." Second, the device is not used on "premises." The Commission's rules define "premises" as "generally a dwelling unit, other building

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50/ *Id.*

51/ Rules of statutory construction hold that "the latest expression of the will of the lawmaker prevails over an earlier one," *Schick v. United States*, 195 U.S. 65, 68-69 (1904), and that a specific statute will not be controlled or nullified by a general one," *Morton v. Mancari,* 417 U.S. 535, 552 (1974).

52/ *See Further Notice* at ¶ 78.

53/ *See Further Notice* at ¶¶ 79, 91.

54/ 47 U.S.C. § 153(14).

or a legal unit of real property such as a lot on which a dwelling is located." 55/ The Commission's own definition thus equates "premises" with real property, and no Commission precedent has given any indication that the term would ever be extended to include automobiles.

Moreover, even if the Tele Aid device were CPE, the only court opinion cited in the Further Notice in support of CPE jurisdiction is distinguishable. In *CCIA*, the D.C. Circuit upheld the Commission's assertion of jurisdiction over *carrier-provided* CPE. 56/ The Commission had argued, and the court agreed, that ancillary jurisdiction over CPE was justified because it "was necessary to carry out [the Commission's] duty to assure the availability of transmission services at reasonable rates." 57/ Thus, this decision upheld the exercise of authority over carriers' *provisioning* of CPE, not over the manufacturing of CPE by non-carriers, and it did so only because such action was *necessary* to the Commission's duties.

55/ 47 C.F.R. § 68.3. The typical dictionary definition of "premises" is "land and the buildings on it." *See Webster's II New College Dictionary* 872 (1999); *see also* 15 FCC Rcd 17806, 17868 n.108 (referring to the dictionary definition of "premises").

56/ *Computer & Communications Ind. Ass'n v. FCC*, 693 F.2d 198 (1982) ("*CCIA*").

57/ *Id.* at 213. The court also explained that "instead of regulating charges for CPE, the Commission has . . . exercised its ancillary jurisdiction to forbid carriers from offering CPE as part of a transmission service and to require AT&T to provide CPE only through a separate subsidiary." *Id.* at 211.

CONCLUSION

For the foregoing reasons, the Commission should avoid imposing regulations of safety-focused telematics services such as Tele Aid and other similarly structured services, and should avoid treating telematics devices such as the Tele Aid device as otherwise subject to its E911 rules. Not only is regulation not needed to ensure that telematics providers will continue to offer the most effective emergency assistance available, but regulation could actually decrease the overall deployment of telematics services, and result in critical delays in the deployment of Phase II capabilities by PSAPs across the nation.

Respectfully submitted,

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